*THE HON'BLE SRI JUSTICE P.S. NARAYANA

+W.P.No.5478 of 1997

% 2-12-2004

The Director, Rural Development,

Vikarabad, Ranga Reddy District

and another .. Petitioners

Vs.

$ The Deputy Secretary to Government

Of Andhra Pradesh, Transport.

Roads & Buildings (Respondent-II)

Department,

and others .. Respondents

<GIST:

>HEAD NOTE:

! Counsel for petitioners : Sri N.Vasudeva Reddy

^ Counsel for respondents : Government Pleader for Land Acquisition

?CASES REFERRED :

[1] (1993) 2 SCC 84

[2] 1988(1) ALT 734

[3] AIR 1959 A.P. 52

[4] 1978(1) ALT 40

[5] 1993(2) ALT 244

[6] 1996(4) ALT 393

[7] AIR 1970 S.C. 1576

[8] AIR 1975 S.C. 1767

[9] AIR 1996 S.C. 122

[10] AIR 2001 S.C. 437

IN THE HIGH COURT OF JUDICATURE OF ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE SECOND DAY OF DECEMBER TWO

THOUSAND AND FOUR

PRESENT

THE HON'BLE SRI JUSTICE P.S. NARAYANA

W.P.No.5478 of 1997

Between:

1. The Director, Rural Development,
   Vikarabad, Ranga Reddy District.
2. Crawford Memorial Hospital,
   Vikarabad, Ranga Reddy District.

Both are represented by their G.P.A.
Rev.E.D.Yesurathnam, District
Superintendent, Methodist Church,
Vikarabad, Methodist Church in India. .. Petitioners

AND

1. The Deputy Secretary to Government
   of Andhra Pradesh, Transport
   Roads & buildings (R-II) Department.
2. The Land Acquisition Officer-Revenue
Divisional Officer, Vikarabad
at Vikarabad, Ranga Reddy District.
3. The Executive Engineer, R & B Vikarabad,
Ranga Reddy District.

.. Respondents

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue an appropriate writ, order or direction more particularly one in the nature of writ of mandamus declaring the action of the respondents in denotifying the lands bearing S.Nos.29 measuring Ac.0-33 cents, S.No.39 measuring Ac.1-26 cents, totally measuring Ac.1-59 cents of dry in Vikarabad village and Mandal, Ranga Reddy District as illegal, without jurisdiction and consequently quash the memo dated 23-12-1993 published in A.P. Gazette on 10-1-1994 and direct the respondents to renotify and pay compensation as per the provisions of the Land Acquisition Act 1894.

Counsel for the petitioners : Sri N.Vasudeva Reddy

Counsel for the respondents : Government Pleader for Land Acquisition

The Court made the following :

THE HON'BLE SRI JUSTICE P.S. NARAYANA

W.P.No.5478 of 1997

ORDER:

The petitioners prayed for an appropriate writ, order or direction more particularly one in the nature of writ of mandamus declaring the action of the respondents in denotifying the lands bearing S.Nos.29 measuring Ac.0-33 cents, S.No.39 measuring Ac.1-26 cents, totally measuring Ac.1-59 cents of dry in Vikarabad village and Mandal, Ranga Reddy District as illegal, without jurisdiction and consequently quash the memo dated 23-12-1993 published in A.P. Gazette on 10-1-1994 and direct the respondents to renotify and pay compensation

as per the provisions of the Land Acquisition Act 1894 and pass such other suitable orders.

The case of the petitioners is that they are the absolute owners of the lands in S.No.29 measuring Ac.0-33 cents, S.No.34 measuring Ac.0-11 cents and S.No.39 measuring Ac.1-26 cents, in all measuring Ac.1-70 cents of dry in Vikarabad village and Mandal, Ranga Reddy District and they were in possession of the said lands for more than 50 years and there are houses and structures also in S.Nos.29 and 34 and the 2nd petitioner is running a hospital in the name of Crawford Hospital. It is also stated that the petitioners were in possession of the said lands and the respondents initiated proceedings under the Land Acquisition Act, 1984 (hereinafter in short referred to as “Act” for the purpose of convenience) for acquiring an extent of Ac.1-70 cents in S.Nos.29, 34 and 39 for the purpose of construction of approach road to road over bridge at Vikarabad. Accordingly notification under Section 4(1) of the Act was issued on 15-1-1990 and the same was published in the A.P. Gazette G.O.Rt.No.58. It is also specifically averred that in pursuance of the said notification the respondents had taken possession of the said lands on 8-1-1993 and laid a road. The petitioners challenged the said acquisition proceedings in W.P.No.1007/93 and initially the Writ Petition was admitted and an order of status-quo was granted but subsequent thereto the same was vacated and the respondents

were directed to pay compensation in respect of Ac.0-11 cents of land in S.No.34 and in respect of the other lands suitable directions were issued to the authorities to decide the title. It is also stated that despite the said order the respondents had not deposited any compensation in respect of Ac.0-11 cents of land also. After disposal of the Writ Petition, the respondents, in stead of passing award and referring the matter under Section 30 of the Act for adjudication of title issued a memo No.1657/R-II-2/93-2 dated 23-12-1993 withdrawing the acquisition proceedings with respect to S.Nos.29 and 39 measuring Ac.0-33 cents and Ac.1-26 cents respectively, totally admeasuring Ac.1-59 cents, exercising powers under Section 48 of the Act which had been published in A.P. Gazette on 10-1-1994.

It is also stated that the respondents had set up a claim on the ground that these lands are Government lands and the petitioners are encroachers and land grabbers and filed O.P.No.444/88 before the A.P. Land Grabbing (Prohibition) Tribunal-cum-District Judge, Ranga Reddy in relation to S.No.39 claiming that the petitioners are land grabbers. The Tribunal by the Judgment dated 4-12-1995 held that the Government failed to show even prima facie title to the land and accordingly dismissed the said O.P. Appeal L.G.A.No.20/96 was filed before the Special Court under A.P. Land Grabbing (Prohibition) Act, Hyderabad and the same was dismissed on 19-2-1997. It is also stated that inasmuch as the proceedings filed by the Government

were pending before the Tribunal and Appeal L.G.A.No.20/96 was dismissed on 19-2-1997 only as advised the writ petitioners had challenged the impugned proceedings in the present Writ Petition in the year 1997.

In the counter affidavit filed by the 2nd respondent, allegations were denied and specific stand was taken that the lands in S.Nos.29 and 39 have been notified as Government lands in A.P. Gazette No.RR-4 dated 15-2-1990. Further, specific stand was taken that it is not true to say that pursuant to the said notification, the respondents have taken possession of the said lands on 8-1-1993 and the notification under Section 4(1) of the Act in respect of S.Nos.29 and 39 have been withdrawn since possession had not been taken. The notification under Section 48 of the Act had been published in A.P. Gazette RR-1, dated 10-1-1994. Even in relation to W.P.No.1007/93 it was stated that the question in the said Writ Petition was whether the petitioners are entitled for payment of 80% of the compensation as per Section 17(3-A) of the Act and in view of the dispute relating to ownership and inasmuch as the title of the petitioners cannot be decided in the Writ Petition, the same may have to be decided in accordance with the provisions of the Act and hence the status-quo granted was vacated and explanation also had been given why the direction could not be complied with. Several details relating to O.P.No.444/88 and also L.G.A.No.20/96 referred to supra had been

narrated. In para-10 of the counter affidavit several Writ Petitions and the orders made in the respective Writ Petitions also had been specified.

The petitioners filed reply affidavit wherein they had specifically stated that the petitioners are the absolute owners of the aforesaid properties and the respondents without any ownership rights declared as Kariz Katha lands and the said lands were notified under the Act and possession had been taken as specified above. Further specific stand possession had been taken as specified above. Further, specific stand was taken that in the light of the order passed in W.P.No.1007/93 and also the specific stand taken by the Government in the counter affidavit relating to taking possession, no contrary stand can be taken in this regard.

Sri Vasudeva Reddy, the learned Counsel representing the petitioners had drawn the attention of this Court to the language employed in Section 48 of the Act and also the specific stand taken by the Government in the counter affidavit filed in W.P.No.1007/93 and would contend that the aim of the Government appears to be to avoid payment of compensation by taking such a stand. The powers under Section 48(1) of the Act cannot be invoked after taking possession and hence shifting of the stand now in the present counter affidavit cannot alter the situation in any way in the light of the specific stand already taken by the Government. The learned

Counsel also pointed out that in the light of the decisions in O.P.No.444/88 on the file of A.P. Land Grabbing (Prohibition) Tribunal-cum-District Judge, Ranga Reddy District and also in L.G.A.No.20/96, the Government no longer can contend that these are Government lands. Even otherwise, the learned Counsel also had pointed out that the concerned District Collector himself directed mutation of records in the light of the decisions rendered in the aforesaid Land Grabbing (Prohibition) proceedings. Apart from this aspect of the matter, the Counsel also contended that as far as these aspects are concerned, in relation to A.P. (Telangana Area) Land Revenue Act and also the Rules framed thereunder, specific findings had been recorded in O.P.No.444/88. The learned Counsel also pointed out that even otherwise while denotifying or withdrawing the land acquisition proceedings, no ground had been spelt out and on that ground also the impugned proceedings are liable to be quashed. The learned Counsel to substantiate his submissions placed reliance on certain decisions in this regard.

Per contra, the learned Government Pleader for Land Acquisition made the following submissions. The learned Counsel had taken this Court through the series of Writ Petitions which had been specified in para-10 and also the long drawn litigation between the Government

and the writ petitioners in the Land Grabbing (Prohibition) proceedings and had pointed out that there is a serious dispute relating to the title. The learned Counsel also pointed out that on a careful reading of the counter affidavit filed in the prior Writ Petition, this aspect of taking possession on the specified date had not been clearly mentioned and the only question that had been decided in the prior Writ Petition was whether the advance payment of compensation as claimed by the writ petitioners to be paid and suitable directions in that regard to be granted or not. The learned Counsel also had taken this Court through the order passed in the prior Writ Petition and would contend that merely because the Government was unsuccessful in the Land Grabbing proceedings referred to supra, by that itself it cannot be said that the petitioners are owners of these properties. Hence, the denotification or the withdrawal by invoking powers under Section 48 of the Act are well justified in the facts and circumstances of the case. The Counsel also would contend that inasmuch as the petitioners are not the owners of these properties, there is no question of paying any compensation and hence the denotification is well justified.

Heard both the Counsel and perused the material available on record.

The factual matrix already had been specified supra. The specific stand taken by the writ petitioners is that the petitioners are

the absolute owners of the lands in S.No.29 measuring Ac.0-33 cents, S.No.34 measuring Ac.0-11 cents and S.No.39 measuring Ac.1-26 cents, in all measuring Ac.1-70 cents of dry land in Vikarabad village and Mandal, Ranga Reddy District. As far as the extent of Ac.0-11 cents in S.No.34 is concerned, in view of the orders already passed in W.P.No.1007/93, the said aspect need not be considered. As can be seen from the facts the notification under Section 4(1) of the Act was issued on 15-1-1990 and the same was published in Gazette in G.O.Rt.No.58 and the respondents had taken possession of the said lands on 8-1-1993 for laying the road. It is also not in controversy that the road in fact had been laid. It is also not in dispute that initially an order of status quo was granted in W.P.No.1007/93 which had been subsequently vacated and the said Writ Petition was disposed of with certain directions. It is also true that in the present Writ Petition, in the counter affidavit filed by the 2nd respondent, specific stand had been taken that these lands are notified as Government lands and also it was specifically averred in para-4 of the counter affidavit to the effect that it is not true to say that pursuant to the said notification the respondents have taken possession of the said lands on 8-1-1993. On a careful perusal of the order made in W.P.No.1007/93 and also the stand taken in the counter affidavit filed by the Government, this shift of stand relating to taking possession appears to be an after thought. It is also true that in

para-10 of the counter affidavit, several proceedings had been referred to and they are as hereunder :

Sl. No.	WPMP/WP No.	Date of order	Directions of the Hon'ble Court
1.	4168/83	24-9-87	The petitioner can as well file a suit and there shall be status quo for (03) weeks i.e., from 24-3-87 (Ex-10).
2.	5615/87	27-2-89	The Court cannot interfere with the question of alignment (Ex-11)
3.	19104/87	1-3-89	The points raised in this W.P. are covered by the Judgment in W.P.No.5615/87, dated 27-2-89. Following the Judgment this W.P. is dismissed.
4.	404/89 & 5295/89	27-4-89	The Hon'ble Court observed no reasons to interfere (Ex-13)
5.	WPMP No. 21905/92 in WP No. 16581/89	10-11-92	The interim order dated 27-11-89 is vacated to the extent of 1-70 cents in Sy.No.29, 34, 39 (Ex-14)

---

6. 16350/92 23-12-92 The Hon'ble High Court found

that no such direction as sought for by the petitioner can be issued inasmuch as it is not a sanctioned plan and dismissed the Writ Petition (Ex-15)

7. 16468/92 19-1-93 As alleged in the counter affidavit

the action of the respondents in the interest of the public in general for providing approach facility for easy transportation, the Hon'ble Court found no ground to set aside section 4(1) notification dated 19-01-1990 impugned in the W.P. (Ex-16)

8. WPMP No. 03-02-93 Status quo obtaining as on the

1300/93 in

WP.1007/93 date of order with regard to

possession of the lands in Sy.Nos.39 and 29 measuring (1-70) cents shall be maintained pending further orders on the petition. (Ex.17)

9. 1007/93 13-4-93 L.A.O. directed to deposit in

Court the value of (11) cents of land bearing Sy.No.34, within a period of (02) months from this order in case the possession of the said land is already taken.

For the purpose of deciding the present Writ Petition, only proceedings W.P.No.1007/93 may be of some relevance. In the light of the fact that respondents had taken possession on 8-1-1993, the question which may have to be decided in the present Writ Petition is whether the withdrawal or denotification issued in relation to the properties referred to supra exercising powers under Section 48 of the Act can be sustained or are liable to be quashed.

Section 48 of the Act reads as hereunder :

> **Completion of acquisition not compulsory, but compensation to be awarded when not completed :** (1) Except in the case provided for in Section 36, the Government shall be at liberty to withdraw from the acquisition of any land of which possession has not been taken.
>
> (2) Whenever the Government withdraws from any such acquisition, the Collector shall determination the amount of compensation due for the damage suffered by the owner in consequence of the notice or of any proceedings thereunder, and shall pay such amount to the person interested, together with all costs reasonably incurred by him interest prosecution of the proceedings under this Act relating to the said land.
>
> (3) The provisions of Part III of this Act shall apply, so far as may be, to the determination of the compensation payable under this section.

Section 36 of the Act reads as hereunder :

> **Power to enter and take possession and compensation on restoration :** (1) On payment of such compensation, or on executing such agreement or on making a reference under Section 35, the Collector may enter upon and taken possession of the land, and use or permit the use thereof in

accordance with the terms of the said notice.

(2) On the expiration of the term, the Collector shall make or tender to the persons interested compensation for the damages (if any) done to the land and not provided for by the agreement, and shall restore the land to the persons interested therein.

Provided that, if the land has become permanently unfit to be used for the purpose of which it was used immediately before the commencement of such term, and if the persons interested shall so require, the appropriate Government shall proceed under this Act to acquire the land as if it was needed permanently for a public purpose or for a company.

Sub-section (1) of Section 48 of the Act specifies that except in the case provided for in Section 36, the Government shall be at liberty to withdraw from the acquisition of any land of which possession has not been taken. On a careful reading of Section 36 of the Act, it is need less to say that the same has no application to the present case. Hence from a reading of sub-section (1) of Section 48 of the Act it is clear that this power can be exercised only in a case where possession of the land had not been taken. I n **RAJASTHAN HOUSING BOARD Vs. SHRI KISHAN** at para 26 it was held as hereunder :

"We are of the further opinion that in any event the Government could not have withdrawn from the acquisition under Section 48 of the Act inasmuch as the Government had taken possession of the land. Once the possession of the land is taken it is not open to the Government to withdraw from the acquisition. The very letter dated February 24, 1990 relied upon by the Counsel for the petitioner recites that "before restoring the possession to the society the amount of development charges will have to be returned back…..". This shows clearly that possession was taken over by the Housing

> Board. Indeed the very tenor of the letter is, asking the Housing Board as to what development work they had carried out on the land and how much expenditure they had incurred thereon, which could not have been done unless the Board was in possession of the land. The Housing Board was asked to send the full particulars of the expenditure and not to carry on any further development works on that land. Reading the letter as a whole, it cannot but be said that the possession of the land was taken by the Government and was also delivered to the Housing Board. Since the possession of the land was taken, there could be no question of withdrawing from the acquisition under Section 48 of the Land Acquisition Act, 1894."

In **K.NARASIMHA REDDY Vs. DISTRICT COLLECTOR** it was held that the Collector has no jurisdiction to issue withdrawal notification after taking over possession of the land and High Court can issue certiorised writ of mandamus directing the Government to acquire the land by passing the award. In **NAGESWARA RAO Vs. SPECIAL DEPUTY COLLECTOR** the Division Bench observed that where the Government have taken possession of the land soon after the award they are not at liberty to withdraw from the acquisition of the land. The same view was expressed in **AGRICULTURAL MARKET COMMITTEE Vs. GOVERNMENT OF A.P. , CH.MADHUSUDAN REDDY Vs. REVENUE DIVISIONAL OFFICER (LAO), WARANGAL** and **A.V.PAPAYYA SASTRY Vs. STATE OF A.P. .** In **LT.GOVERNOR, H.P. Vs. AVINASH SHARMA** the Apex Court held that after possession has been taken pursuant to the notification under Section 17(1) of the Act, the land is vested in the Government and the notification cannot be cancelled under Section 21 of the

General Clauses Act nor can the notification be withdrawn by exercising powers under Section 48 of the Act. The Apex Court expressed the same view in **B.N.BHAGDE Vs. M.D. BHAGWAT** and also in **AWADH BIHARI YADAV Vs. STATE OF BIHAR** .

Apart from this aspect of the matter, on a careful reading of the denotification, no reasons had been spelt out. The learned Counsel for the writ petitioners placed strong reliance on a decision of the Apex Court in **STATE GOVERNMENT HOUSELESS HARIJAN EMPLOYEES ASSOCIATION Vs. STATE OF KARNATAKA** wherein the Apex Court held that a beneficiary has a right to be heard before a notification under Section 48(1) withdrawing from acquisition is issued and this right is not limited to acquisition for companies under Part VII of the Act. The Apex Court also observed at paras 32 and 48 as hereunder :

> "This Section does not in terms exclude the principles of natural justice. However, the section has been construed to exclude the owner's right to be heard before the acquisition is withdrawn. This is because the owner's grievances are redressable under Section 48(2). "No irreparable prejudice is caused to the owner of the land and, if at all the owner has suffered any damage in consequence of the acquisition proceedings or incurred costs in relation thereto, he will be paid compensation thereof under Section 48(2) of the Act". (See : Amar Nath Ashram Trust Society v. Governor of U.P. (1998) 1 SCC 591 at p.596 : (1998AIR SCW 59 at p.62 : AIR 1988 SC 477 at p.480) (See also Special Land Acquisition Collector v. Godrej and Boyce : (1988) 1 SCR 590 : AIR 1987 SC 2421). But as far as the beneficiary of the acquisition is

concerned there is no similar statutory provision. In contrast with the owners position the beneficiary of the acquisition may be withdrawal from the acquisition suffer substantial loss without redress particularly when it may have deposited compensation money towards the cost of the acquisition and the steps for acquisition under the Act have substantially been proceeded with. An opportunity of being heard may allow the beneficiary not only to counter the basis for withdrawal, but also, if the circumstances permitted, to cure any defect or shortcoming and fill any lacuna. No reason has been put forward by the respondents to exclude the application of the principle of natural justice to Section 48(1) of the Act.

…..

…..

The basis on which the learned Judge dismissed the appellant's writ petition was that there was no approval of the appropriate Government to the acquisition, namely, the absence of the third factor noted above. This was not the ground on which withdrawal from the acquisition had been made and it was not open to the State Government to justify its decision on any other ground. As held by this Court in Mohinder Singh Gill v. Chief Election Commissioner, New Delhi, (1978) 1 SCC 405 at p.417 : (AIR 1978 SC 851 at p.858):

"…..when a statutory functionary makes an order based on certain grounds its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to court on account of a challenge, get validated by additional grounds later brought out."

The other contentions relating to the revenue entries, dispute relating to the title, land grabbing proceedings and the result thereunder need not detain this Court any longer in view of the fact that the language of Section 48(1) of the Act is clear and categorical and in the light of the stand taken by the Government in the prior Writ Petition

W.P.No.1007/93, this Court has no hesitation at all in holding that in the present Writ Petition, there is a shift relating to the stand of not taking possession only with a view to avoid payment of compensation and nothing more and nothing beyond. Inasmuch as the prayer which had been prayed for in the present Writ Petition is as specified supra, the other contentions need not be dealt with elaborately.

For the foregoing reason, this Court is of the considered opinion that the withdrawal or the denotification issued by the Government exercising powers under Section 48(1) of the Act definitely cannot be sustained and hence the impugned proceedings are hereby quashed and the Writ Petition is accordingly hereby allowed. Costs quantified at Rs.5000/- payable to the writ petitioners.

P.S.Narayana.,J

Date : 2-12-2004

L.R. copy to be marked : YES / NO

That Rule Nisi has been made absolute as above.

Witness the Hon'ble Sri Devinder Gupta, the Chief Justice on this Second Day of December Two Thousand and Four.

ASST. REGISTRAR

To:

(One fair copy to the Honourable Mr.Justice P.S.Narayana for his Lordship's kind perusal)

1. The Deputy Secretary to Government

of Andhra Pradesh, Transport

Roads & buildings (R-II) Department.

2. The Land Acquisition Officer-Revenue

Divisional Officer, Vikarabad

at Vikarabad, Ranga Reddy District.

3. The Executive Engineer, R & B Vikarabad,

Ranga Reddy District.

4. 2 copies to Government Pleader for

Land Acquisition, High Court Buildings,

5. The Under Secretary, Union of India, Ministry of Law, Justice & Company Affairs, New Delhi.

6. The Secretary, A.P. Advocates Association Library, High Court Buildings, Hyderabad.

7. 8 L.R. copies.

8. 2 C.D. copies